STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12240-0100

Variance Petition

of

Asbestos & Environmental Consulting Corporation (AECC)
Petitioner's Agent

On Behalf Of

TD Development, LLC
Petitioner

in re

Premises: Former Beech Nut Facility
68 Church Street
Canajoharie, NY 13317

Interior Friable and Non-friable Removals and Cleanup

File No. 14-0590

DECISION

Cases 1-8

ICR 56

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 14-0590 on June 4, 2014 with the Commissioner of Labor for a variance from the provisions of Industrial Code Rule 56 as hereinafter cited on the grounds that there are practical difficulties or unnecessary hardship in carrying out the provisions of said Rule; and the Commissioner of Labor having reviewed the submission of the petitioner dated May 15, 2014; and

Upon considering the merits of the alleged practical difficulties or unnecessary hardship and upon the record herein, the Commissioner of Labor does hereby take the following actions:

Case No. 1	ICR 56-4.8(a)
Case No. 2	ICR 56-7.8(a)(1)
Case No. 3	ICR 56-7.8(a)(11)
Case No. 4	ICR 56-8.9(g)
Case No. 5	ICR 56-9.2(d)
Case No. 6	ICR 56-11.8(b)(4)(iii)
Case No. 7	ICR 56-11.5(b)(1)
Case No. 8	ICR 56-11.6(c)

VARIANCE GRANTED. The Petitioner's proposal for removal and cleanup of 13,000 LF of ACM thermal system insulation, 150,000 SF of ACM roofing materials, 3,300 SF of ACM floor tile and 360 SF of ACM ceiling tile at the above premises and as listed in accordance with the attached 7-page stamped copy of the Petitioner's submittal is accepted; subject to the Conditions noted below:

THE CONDITIONS

1. A full time independent project monitor shall be on-site to observe the abatement contractor's work practices and to ensure that no visible emissions are generated during the removal and cleanup activities. If visible emissions are observed, work practices shall be altered according to the project monitor's recommendations.

2. Non-friable ACM floor tile removals shall be in full accordance with ICR 56-11.7 and the variance petition.

3. The removal of the non-friable ACM roofing material may be removed by mechanical means as proposed in the variance petition. All other applicable provisions of ICR 56-11.4 and ICR 56-11.6 shall be followed for the pre-demolition removal of all ACM materials.

Remote Personal Decontamination Units

4. Remote Personal Decontamination Units must be located on-site and within 50 foot of the structure that is subject to abatement. These enclosure systems shall be removed only after satisfactory clearance air monitoring results have been achieved or the abatement project is complete. The walkway from the regulated abatement work area to the decontamination system or next work area shall have a cleared pathway. This walk way will be delineated and separated from non-certified personnel access.

5. Each restricted area shall have an attached air lock within which workers shall remove their outer suit, wipe off their inner suit and don a clean outer suit prior to proceeding to another work area or to the remote decontamination unit over a walk way as defined above.

6. If remote decontamination units are to be used, an airlock as defined in Subpart 56-7.5(b) (11) of this Code Rule shall be constructed at the entrance to each restricted area, and shall be large enough to serve as a changing area. Within the airlock, workers shall remove their outer suit, wipe off their inner suit and don a clean outer suit prior to proceeding to another work area or to the remote personal decontamination unit over a walk way as defined above. The airlock/changing area shall not be used as a waste storage area.

7. Waste decontamination shall comply with ICR 56-7.5(f).

8. The restricted areas, regulated abatement work areas, decontamination units, airlocks, and dumpster areas shall be cordoned off at a distance of twenty-five feet (25'), and shall remain vacated except for certified workers until satisfactory clearance air monitoring results have been achieved or the abatement project is complete. These areas shall have Signage posted in accordance with Subpart 56-8.1(b) of this Code Rule.

Secure the Work Site

9. The entire controlled demolition area and all surrounding portions of the site to be utilized for demolition cleanup, staging areas and regulated abatement work areas, shall be enclosed within a barrier or fence (orange construction fence or snow fence) at a distance of twenty-five (25'). The intent of this barrier is to define the restricted area at the work site, alert the public to the asbestos work and associated hazards, and to prevent unauthorized entry onto the work site.

10. Entry/Exit of all persons and equipment shall be through one designated and secure "doorway" in the barrier or fence, which shall provide an adequate and appropriate means of egress from the work site.

11. Signage in accordance with the requirements of ICR 56-7.4(c) shall be posted on the exterior of the work site boundary fence/barrier, to warn the public of the asbestos hazard.

Establishment of Regulated Areas

12. The regulated work areas, decontamination units, airlocks, and dumpster areas shall be cordoned off at a distance of twenty-five feet (25') where possible, and shall remain vacated except for certified workers until satisfactory clearance air monitoring results have been achieved or the abatement project is complete. These areas shall have Signage posted in accordance with Subpart 56-7.4(c) of this Code Rule. For areas where twenty-five feet isn't possible, the areas shall be cordoned off as practical, and a daily abatement air sample shall be included in the vicinity of the barrier.

Wrap and Cut Removals

13. The full time on-site Project Monitor will be responsible to determine if pipe/fitting insulation or other thermal system insulations is too damaged to perform wrap-and-cut or glovebag operations. Any thermal system insulation that is significantly damaged and will likely be disturbed during wrapping or glovebag installation, shall require gross removal within a negative pressure enclosure as per the conditions of this variance. All failures of the abatement contractor to comply with the project monitor's determination regarding damage shall be immediately reported by the project monitor to the local district of the asbestos control bureau.

14. Abandoned pipe/duct/conduit wrap and cut removals shall be in full accordance with ICR 56-11.8 and the variance petition

15. Under areas where ACM is scheduled for negative pressure glovebag operations without a tent enclosure, a dropcloth, made of 6 mil fire retardant polyethylene sheeting, shall be placed below the material to be removed to prevent spread of any ACM remnants. This dropcloth shall be a minimum of 10 feet wide with an additional 10-ft. of width for every 20 feet in height above the floor/ground level where removal work will take place. This dropcloth shall be removed and containerized following removal of the glovebags or abandoned piping, prior to the cleaning stage. All remnants observed on the dropcloth shall be collected and immediately bagged or containerized for disposal as ACM.

16. After abatement of the asbestos and asbestos debris, all plastic sheeting and tape will be treated as contaminated material and properly disposed of asbestos waste at the end of the project.

Negative Air Shutdown

17. When negative air machines are shut down at the end of each work day, the negative air machines shall continue to run for a minimum of thirty (30) minutes following completion of all abatement/cleaning activity for the day. Once the thirty (30) minute time period has elapsed, all accesses to the regulated abatement work area shall be sealed airtight, after all workers have exited the work area.

18. When re-establishing the work area in the morning, wait 30 minutes after manometer reads a minimum of -.02" of water pressure differential before entering the work.

Negative Air Exhaust

19. Negative pressure ventilation units that cannot be exhausted to the outside of the building or structure shall be directed to an unoccupied, controllable location within the building. This location shall be accessible for the placement of air monitoring equipment as required by the applicable sections of ICR 56. A controllable area shall be defined as an existing, vacant room or an area within a larger space isolated by barrier tape and warning signs. This location shall be adequately sized to accommodate the increase in positive pressure to the area.

20. All openings within 25 feet of the Negative air machine exhaust termination shall be sealed with two layers of fire retardant polyethylene.

21. Banking of negative air ducts terminating inside the building or structure is not allowed. Daily air sampling for the negative air exhausts shall be per exhaust.

Trailers and Dumpsters

22. Prior to loading and/or transport of waste from the work site, all waste trailers and dumpsters shall be sealed to ensure air, dust and watertight integrity, utilizing six (6) mil plastic, duct tape and expandable foam sealant as necessary. The waste transporter is responsible for cleaning/decontamination of waste trailers or dumpsters, once the waste has been properly disposed of at the appropriately licensed and permitted landfill.

23. After removal and cleanings are complete and a minimum waiting/drying period has elapsed, an authorized and qualified Project Monitor shall determine if the scope of work was completed and confirm the area is dry and free of visible asbestos debris/residue in accordance with ICR 56-9.1(d)(1). If the area is determined to be acceptable and the aggressive clearance air samples results meet ICR 56-4.11 clearance criteria, the final dismantling of the site may begin.

24. Usage of this variance is limited to those asbestos removals identified in this variance or as outlined in the Petitioner's proposal.

In addition to the conditions required by the above specific variances, the Petitioner shall also comply with the following general conditions:

GENERAL CONDITIONS

1. A copy of this DECISION and the Petitioner's proposals shall be conspicuously displayed at the entrance to the personal decontamination enclosure.

2. This DECISION shall apply only to the removal of asbestos-containing materials from the aforementioned areas of the subject premises.

3. The Petitioner shall comply with all other applicable provisions of Industrial Code Rule 56-1 through 56-12.

4. The NYS Department of Labor Engineering Service Unit retains full authority to interpret this variance for compliance herewith and for compliance with Labor Law Article 30. Any deviation to the conditions leading to this variance shall render this variance Null and Void pursuant to 12NYCRR 56-12.2. Any questions regarding the conditions supporting the need for this variance and/or regarding compliance hereto must be directed to the Engineering Services Unit for clarification.

5. This DECISION shall terminate on June 30, 2015.

Date: June 6, 2014

PETER M. RIVERA
COMMISSIONER OF LABOR

By

Edward A. Smith, P.E.
Senior Safety and Health Engineer

PREPARED BY: Mark G. Wykes, P.E.
Senior Safety and Health Engineer

REVIEWED BY: Edward A. Smith, P.E.
Senior Safety and Health Engineer

ABATEMENT QUANTITIES & PROPOSED ABATEMENT METHODS

BUILDING MATERIAL	ESTIMATED QUANTITY	ABATEMENT METHODS
Thermal System Insulation	13,000 LF	Wrap & Cut Procedures, Utilizing Negatively Pressurized Glovebags
Roofing Materials	150,000 SF	RWA Establishment, Remote Decon, Mechanical Cuts, Intact Removal
Floor Tile	3,300 SF	ICR 56 Procedures, Except for Reduced Waiting Periods
Ceiling Tile	360 SF	ICR 56 Procedures, Except for Reduced Waiting Periods

SECTION 9 – ICR 56 RELIEF SOUGHT

- 56-4.8(a) - Turnaround Time for Air Sample Analysis (General Provision)
- 56-7.8(1) - Negative Air Pressure Equipment for Continuous Operation (General Provision)
- 56-7.8(a)(11) - Negative Air Exhaust Location (General Provision)
- 56-8.9(g) - Plasticizing Dumpsters/Trailers with Non-Friable ACM (General Provision)
- 56-9.2(d) - Daily Air Samples As Finals (Wrap-and-Cut, Utilizing Neg. Pressure Glovebags)
- 56-11.8(4)(iii) - Wrap & Cut Procedures (Negative Pressure Glovebags)
- 56-11.5(b)(1) - Utilize Controlled Demolition Procedures (without condemnation)
- 56-11.6(c) - Mechanical Removal of Non-ACM Components (Roofing Materials Only)

SECTION 10 – HARDSHIP DESCRIPTIONS

Sample Turnaround – On days when no work will occur on site (weekend/holidays), then relief is requested from the required 48 hour sample turnaround. On weekend/holidays, the laboratories are not open making meeting such deadlines very difficult. As such, AECC requests relief from 48 hour TAT when weekends/holidays are involved, making sample results due back by the end of the next working shift. At no time, will sample TAT exceed 72 hours.

Negative Air Operation – The building is not currently occupied and will not be re-occupied prior to demolition. As such, there are multiple security/safety concerns regarding the continuous operation of negative air equipment and temporary power sources like gas-powered generators. Based on these concerns, we request that the negative air be shut down thirty (30) minutes after the completion of each work shift. Each area shall be sealed and remain sealed until the negative air is re-established for a minimum of thirty (30) minutes prior to the start of the shift each day. This measure provides adequate protection to the health & safety of the general public, while preventing security/safety concerns resulting from fire hazards and/or vandalism/theft that may occur otherwise.

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Negative Air Exhaust Location – In locations where the exhaust of negative air cannot be directed to the exterior of the building within the required 25 feet, the contractor shall establish a "controlled area" in an adjacent unoccupied space or he shall create an enclosure to receive exhaust. An additional air sample shall be collected at these exhaust locations.

Relief from Plasticizing Dumpsters for C&D Waste – Relief from plasticizing requirements for dumpsters/trailers scheduled to receive non-friable building materials that will be disposed of as Construction & Demolition Debris is requested. Facilities receiving Construction & Demolition (C&D) waste/debris will not accept the poly utilized to line the dumpster, creating a significant amount of poly with no appropriate disposal location. PRIOR TO LOADING AND TRANSPORT FROM THE WORK SITE ALL WASTE TRAILERS AND DUMPSTERS SHALL BE SEALED TO ENSURE AIR, DUST AND WATER TIGHT INTEGRITY.

SEE VARIANCE 6/5/14 NEW —

Daily Air Samples As Finals – Due to the nature of the facility and limited power available, it is anticipated that air sampling will be difficult. Therefore, AECC proposes that in locations where relief from negative pressure enclosures is granted (intact component removal) that the most recent set of daily air samples be used as clearance air sampling in combination with a successful Project Monitor visual inspection. Work shall be considered complete when air sample results indicate NYSDOL clearance criteria has been achieved. The areas shall be recleaned and samples collected until the required clearance criteria has been achieved.

Relief from Tent Enclosures for Glovebag Abatement – In lieu of the construction of tent enclosures to allow for cuts in ACM insulated pipe, ducts and conduit as necessary to perform wrap and cut procedures, AECC proposes that negative pressure glovebag procedures be utilized instead. This measure will reduce the safety risks associated with trying to install, maintain and safely access negative pressure tent enclosures for the duration of the project as the majority of the ACM insulation removals will be conducted at heights of 80-100 ft.

Pre-Abatement & Post-Abatement Waiting Periods – The use of generators for extended periods of time pose a potential fire risk. As such, we would like to propose a 1-hour pre-abatement waiting period and a 2-hour post abatement waiting period for all RWAs, regardless of size or material type (unless ICR 56 provisions require less of a waiting period or no waiting period). The Project Monitor shall verify that the RWA is completely dry prior to conducting any final visual inspections / final air sampling activities.

Utilize Controlled Demolition Procedures – AECC proposes that once all friable abatement has been completed (and the removal of all transite and floor tile/mastic), the remainder of the abatement to be conducted involves non-friable ACM (roofing materials, siding materials, caulking, sealants, window glazing applications, etc.). Due to site conditions (dilapidated buildings and elevated heights), attempting to access these materials with personnel and equipment would create significant safety risks. As such, AECC proposes that in lieu of abatement exterior non-friable materials, these materials would be handled in a manner consistent with Controlled-Demolition Procedures as outlined in 56-11.5. This measure provides adequate protection to the health and safety of the general public while eliminating the safety risks associated with utilizing abatement personnel to perform manual removal.

Mechanical Separation of Roofing – It is anticipated that the contractor may encounter ACM that cannot be separated from the roof deck in its entirety and safe access to some locations present significant safety concerns for abatement personnel. Therefore in these locations we

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propose that the contractor mechanically remove the non-friable roofing system, materials are brought to the ground within a "Regulated Work Area" and separated for disposal by certified personnel. This measure meets the intent of ICR 56 while preventing significant safety hazards associated with placing abatement personnel on the roofing system

SECTION 11 – PROPOSED ABATEMENT METHODS

General Conditions

1. A full time Project Monitor shall be on site for all the project activities to ensure compliance with the conditions of this variance.

2. An appropriate project-sized attached personal/waste decontamination unit shall be established and utilized for all friable abatement work areas. One centrally located personal & waste decontamination unit shall be established for non-friable abatement work areas for the duration of the project.

3. Barrier tape and signage shall be installed at required distances, in locations where 25 feet cannot be accomplished, barrier tape and signage shall be installed at a maximum distance feasible.

4. Negative air shall be established in accordance with ICR 56, including the installation of a manometer in locations as required by ICR 56. In locations where negative air exhaust cannot be directed to the exterior of the building or space restrictions would create need to exhaust tubing over twenty-five (25) ft. in length, the contractor shall exhaust to an unoccupied "controlled location" within the building. An additional air sample shall be collected from this location for the duration of abatement activities. In the event no natural space occurs to exhaust negative air into a "controlled area" then the contractor may construct an enclosure utilizing adequately supported 6 mil poly.

5. At the completion of the shift, the area(s) shall be sealed and the negative air shut down a minimum of 30 minutes following completion of the shift. Work shall not resume until negative air has been re-established for a minimum of 30 minutes and the supervisor has inspected all barriers.

6. Dumpsters utilized for disposal of non-friable ACM that meet the criteria for disposal as construction & demolition (C&D) debris shall not require plasticizing. All other waste containers containing RACM shall be plasticized in accordance with ICR 56.

7. A one (1) hour pre-abatement waiting period and a two (2) hour post abatement waiting period for all RWAs, regardless of size or material type. The Project Monitor shall verify that the RWA is completely dry prior to conducting any final visual inspections / final air sampling activities.

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TSI Removal – Wrap & Cut Procedures, Utilizing Negatively Pressurized Glovebags

The following work practices are proposed for this portion of the abatement project (reference File No: 12-0063):

1. Barrier tape and signage shall be placed at a distance of 25 feet from the work area or to the extent feasible without restricting exiting/egress activities in the facility. Decontamination facilities shall be utilized and may be remote.

2. Workers shall don PPE during all prep and abatement activities.

3. Abatement work will comply with 56-8.4(a). A single, negatively pressurized glove bag will be utilized for containment purposes.

4. A drop cloth will be placed under the work area to a distance of 10 feet (or to the further extent possible) and the work will be conducted in a manner to limit the disturbance of the insulating materials. The drop cloth shall be made of 6-mil fire retardant polyethylene sheeting

5. Post abatement / repair activities, the glove bag shall be collapsed in accordance with 56-8.4(a)(7). Any drop cloths shall be bagged and disposed of as ACM waste, prior to the cleaning stage. All remnants observed on the drop cloth shall be collected and immediately bagged or containerized for disposal as ACM.

6. After the removal of the drop cloth, the Contractor shall HEPA vacuum and wet mop the floor areas where the drop cloth was placed to ensure a proper clean-up of the areas.

7. The Supervisor shall document their final visual inspection in their log book, as required by ICR 56 for minor-sized projects.

8. After the glovebag work has been completed, the other provisions of ICR 56 shall apply for the wrap-and-cut work.

9. In lieu of final air sampling, the last day of work-in-progress air sampling shall be utilized for clearance criteria purposes. If all WIP air samples are less than 0.01 f/cc or the background concentrations, the work shall be considered complete.

10. Once the clearance (WIP) air samples have been deemed acceptable, the RWA shall be torn down and all waste shall be disposed of as RACM.

Controlled Demolition of Building with Non-Friable ACM In-Place

1. Once the friable materials (including transite) have been abated from each building, the Supervisor and Project Monitor shall verify that these materials have been satisfactorily removed from the building before proceeding with the controlled demolition of the building. This review shall be documented by the Supervisor in their project log book.

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2. A remote personal/waste decontamination unit shall be established and utilized for the duration of the project. Travel to and from the remote decontamination units shall be via "designated pathways".

3. Barrier tape and signage shall be installed at required distances, in locations where 25 feet cannot be accomplished, barrier tape and signage shall be installed at a maximum distance feasible and an additional sample shall be collected.

4. Once the regulated work area has been established, porous materials discovered within the RWA shall be disposed of as contaminated waste. Non-porous items within the work area may be decontaminated and removed from the work area, following a satisfactory Project Monitor visual inspection.

5. The Contractor shall implement wet methods during all abatement activities. Fire hoses, misting machines, and/or fogging machines shall be utilized to prevent dust emissions during demolition activities.

6. In lieu of the collection of clearance air samples (and after a satisfactory Project Monitor visual inspection has been completed), the last set of daily air samples (contingent on them meeting NYSDOL clearance criteria) shall be utilized as clearance air samples.

7. Post receipt of satisfactory clearance air samples, the Contractor will demobilize and all RWA waste used for critical barriers, etc. shall be disposed of as RACM.

If you have any questions pertaining to this report, please contact me directly at (315) 432-9400.

Sincerely,
Asbestos & Environmental Consulting Corporation (AECC)

Bryan Bowers
NYSDOL Project Designer
License #03-01952

Attachment A: Sketch of Negative Pressurized Glovebag
Attachment B: SSV Petition

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ATTACHMENT A

SKETCH OF NEGATIVE PRESSURIZED GLOVEBAG